

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DEBORAH TRACY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 227,932
<b>KANSAS PLATING, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>ITT HARTFORD</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier requested review of the preliminary hearing Order dated December 12, 1997, entered by Administrative Law Judge John D. Clark.

**ISSUES**

The Administrative Law Judge granted claimant's request for medical and temporary total disability benefits for an accidental injury which culminated on August 26, 1997. The respondent and its insurance carrier requested the Appeals Board to review the following issues:

- (1) Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
- (2) Did claimant provide respondent with timely notice of accident?

Respondent and its insurance carrier contend claimant injured herself at home while caring for her horses rather than at work. They also contend that claimant failed to provide respondent with timely notice of accident as required by K.S.A. 44-520.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Despite testimony from witnesses that suggested claimant's left shoulder injury was not work related and despite the respondent's denial that it had timely notice of a work-related injury, the Administrative Law Judge found claimant's testimony credible and awarded her temporary total disability and medical benefits.

Claimant testified she initially injured her left shoulder on July 30, 1997, while lifting a box of parts. She also testified her symptoms worsened as she continued to work for the respondent through August 26, 1997.

According to claimant, after the lifting incident she immediately notified the person she believed was her supervisor. She testified she told the plant manager in early to mid-August 1997 that she thought she had injured her shoulder at work but also thought the symptoms would resolve. She also testified that on an unknown date in August 1997, she told respondent's office manager she had injured her shoulder at work.

The Administrative Law Judge had the opportunity to observe claimant testify and assess her demeanor and credibility. In awarding benefits, the Administrative Law Judge must have found claimant credible in light of the testimony from the other witnesses. In this instance, the Appeals Board gives some deference to the Judge's determination of claimant's credibility. Therefore, the Appeals Board also finds (1) claimant's testimony persuasive, (2) claimant has proven it is more probably true than not that she injured her left shoulder while working for the respondent, and (3) the accidental injury arose out of and in the course of claimant's employment with respondent. Finally, the Appeals Board finds claimant provided respondent with timely notice of accident which occurred from July 30 through August 26, 1997, as required by K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated December 12, 1997, entered by Administrative Law Judge John D. Clark, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

---

BOARD MEMBER

c: Paul V. Dugan, Jr., Wichita, Ks  
P. Kelly Donley, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director